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the covenantee and the restraint must be ancillary, and that where this is the case the restraint is permissible.⁹ It has been held, however, where the main object was the protection of the covenantee in his purchase of the good will of a business, that the contract was void as tending to a monopoly.¹⁰

The principal case is well within the rule. Each company virtually gave its lines over to the other to use as its agent and necessarily had to protect itself from misuse of the property by the agent—the main object was protection; and the public was not injured, especially as the companies were non-competing, but its convenience was enhanced by the contract.

MAY DAMAGES BE RECOVERED BY A NON-RESIDENT ALIEN FOR THE DEATH OF A SON?

In the dawn of English law there prevailed a notion that they, who had an interest in the life of a person, were entitled to compensation from him who wrongfully caused his death. The reparation was known as *weregild*, and existed under the early Saxon laws.¹ When the forfeiture of goods to the king followed all homicide, the individual, seeing that no property remained from which he might satisfy his right, abandoned it. Thus the enforcement of *weregild* disappeared from the English law.² The action of an individual, on the death of another was recognized, without the pecuniary relief in the appeal of murder as late as 1819,³ when the statute of 59 George III abolished this procedure. However vigorous this idea of the individual right persisted, the maxim of *actio personalis moritur cum persona* crept into the law at an early date and was invoked to prevent recovery for the death of a person.⁴ Not until Lord Campbell's Act was this relief given.⁵ Most American jurisdictions have passed statutes similar in their provisions to the English act,⁶ allowing recovery by the kin of the deced-

⁹ *U. S. v. Addystone*, 29 C. C. A. 141 (1898).

¹⁰ *Lupkin Co. v. Fringeli*, 57 Ohio St. 596 (1898).

¹ Blackstone Commentaries, 188.

² *Shields v. Yonge*, 15 Ga. 349 (1854).

³ *Ashford v. Thornton*, 1 Barn. and Ald. 405 (1818).

⁴ *Higgins v. Butcher*, 1 Yel. 89 (1606); *Carey v. Railroad Co.*, 1 Cush. (Mass.), 1848.

⁵ 9 and 10 Vict., c. 93 (1846).

⁶ Mass. Stat. 1898 c, 535; Penna., Apr. 15, 1851, P. L. 675, sec. 22.

ent within certain degrees as husband, widow, children or parents.⁷

The question of whether a non-resident alien may sue under these statutes has arisen. Two recent cases have passed judgment upon this question. In *Fulco v. Schuylkill Stone Company*,⁸ the plaintiff was a subject of the Kingdom of Italy and sought recovery for the death of her son which occurred in Pennsylvania. The Court followed the interpretation placed by the courts⁹ of Pennsylvania upon their own act and denied that the scope of the act included non-resident foreigners. The treaty of Feb. 26, 1871,¹⁰ which gave the right to Italian citizens to resort to the courts to maintain and defend their rights as freely as natives, was held to apply only to Italians resident in this country,¹¹ and not in the slightest degree to vary the decision of the Court in its interpretation of the Pennsylvania statute. The reasoning adopted by the Wisconsin¹² and Pennsylvania courts, which seem to be alone in their stand is: first, that their laws have no intrinsic force *proprio vigore* extra territorially; secondly, that statutes apply generally only to those who owe obedience to the legislature which enacts them and whose interest it is their duty to protect; and thirdly, it is usually required to grant or concede rights to aliens to make express mention of them. In *Mahoning v. Iron and Steel Co.*,¹³ following the courts of Colorado,¹⁴ whose statute was in question a diametrically opposite decision, was reached. At least a dozen jurisdictions have reached a like conclusion.¹⁵ The English courts agreed with the Pennsylvania interpretation, when the question was first offered for their consideration.¹⁶ A later case, *Davidson v. Hill*,¹⁷ has taken a clear dissent from the earlier case refusing to follow it. It would therefore seem that such courts as rely upon the early English doctrine are weakened to a great degree.

⁷ Penna., Apr. 26, 1855 P. L. 309.

⁸ 163 Fed., 124 (1908).

⁹ *Deni v. Railroad*, 181 Pa. 525 (1897); *Maiorano v. Baltimore R. R.*, 216 Pa. (1907).

¹⁰ 17 Stat. 845.

¹¹ Article 23.

¹² *McMillan v. Spider Lake S. M. Co.*, 115 Wis. 332.

¹³ 163 Fed. 827 (1908).

¹⁴ *Hayes v. Williams*, 17 Colo. 465 (1892).

¹⁵ See *Patek v. American Co.*, 154 Feb. 1901 (1907), for an array of cases.

¹⁶ *Adams v. British Steamship Co.*, 2 Q. B. (1898), 430.

¹⁷ 2 K. B. [1901], 606.

The view of the scope of a statute embracing the provisions of Lord Campbell's Act will depend largely upon the path taken in approaching the problem. If we regard the object of the act punitive then the plausibility of including a non-resident alien is self evident in order to enforce greater efficiency in the protection of human life. This seems to have been the thought in Mr. Justice Holmes' mind in affirming the Massachusetts court¹⁸ when he said, "It is primarily a penalty for the protection of the life of a workman in this state." By a parity of reasoning a Canadian was allowed recovery in Alabama¹⁹ under an act to suppress murder and lynching. Other decisions under acts to augment the safety of mining operations give this right to a non-resident alien.²⁰

If we consider the statute as granting a benefit to the relation of the deceased within certain defined degrees, the question of its extra territorial power arises. The Pennsylvania courts predicate their conclusion on the fact that a non-resident debtor is not entitled to the benefits of their exemption laws.²¹

The language of the various statutes is broad enough to cover the non-resident alien, but it is incumbent upon each court to decide the object of its own act. If we take a retrospective view of the whole matter, may we not say that these statutes grant no new right, but simply remove the bar which has crept into the law when the *weregild* ceased to be pursued by the individual, and it was then thoughtlessly said that the common law supports no action on death? If we answer this in the affirmative, only one logical position can be assumed, viz.: that of the majority as represented by *Hahoning Co. v. Blomfelt*.²²

THE RIGHT OF A THIRD PARTY CLAIMANT TO ENJOIN AN EXECUTION SALE.

In Pennsylvania it has long been the practice to allow a creditor to sell on execution against the lands of the debtor, any title alleged to be in him, leaving the purchaser of such title to try the validity of it afterwards in an action of ejectment. In the recent case of *Mantz v. Kistler et al.* (70 Atlantic Rep. 545,

¹⁸ *Mulhall v. Fallon*, 54 L. R. A. 934 (1905).

¹⁹ *Luke v. Calhoun*, 52 Ala. 115 (1875).

²⁰ *Kelleyville v. Petrytis*, 195 Ill. 215 (1902).

²¹ *Collum's Appeal*, 2 Penny. 130 (1882).

²² 163 Fed. 827 (1908).